

2013 DRAFTING REQUEST

Bill

Received: 12/3/2012	Received By: jkuesel
Wanted: As time permits	Same as LRB:
For: Garey Bies (608) 266-5350	By/Representing: Cory Bruce
May Contact:	Drafter: mduchek
Subject: Public Records	Addl. Drafters:
	Extra Copies: JTK

Submit via email: **YES**
 Requester's email: **Rep.Bies@legis.wisconsin.gov**
 Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Public records redaction fees authorized

Instructions:

Per attached E mail, 12/3/12.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mduchek 12/11/2012			_____ _____			
/P1		csicilia 12/18/2012	rschluet 12/18/2012	_____ _____			State S&L
/1				_____ _____	srose 12/18/2012	mbarman 1/15/2013	State S&L

FE Sent For:

**at
Intro**

<END>

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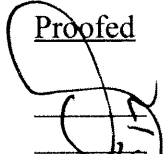
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/?	mduchek	1 g s 12/14 12					

FE Sent For:

<END>

Kuesel, Jeffery

To: Bruce, Cory
Subject: RE: Proposed public records language

Cory,
We will enter your request.

Jeffery T. Kuesel
Wisconsin Legislative Reference Bureau
P.O. Box 2037
Madison, WI 53701-2037
(608) 266-6778
Jeffery.Kuesel@legis.wisconsin.gov

From: Bruce, Cory
Sent: Monday, December 03, 2012 11:26 AM
To: Kuesel, Jeffery
Subject: FW: Proposed public records language

Jeffery,
We'd like to have a bill drafted to allow a custodian to charge a requester for the costs of redacting confidential, non-disclosable portions of a record. Attached is proposed language (which also includes some background). We've been working with the City of Milwaukee, League of Municipalities, and Counties Association on this. Please let me know if you have any questions.

Cory Bruce
Office of Rep. Bies

PROPOSED AMENDMENT TO WISCONSIN PUBLIC RECORDS LAW

The following proposed amendment to Wisconsin Public Records Law, at Wis. Stat. §§ 19.36(6) and 19.35(3), creates a provision for charging requesters for a record custodian's actual, necessary and direct costs of redacting, or separating, portions of records that are not subject to, or prohibited from, public disclosure. Under the current law, there are limited specific provisions for charging the costs of complying with public records requests. The current law includes no specific provision to allow a record custodian to charge a requester for the costs of redacting confidential, non-disclosable portions of records from disclosable portions of records. Government entities, while coping with severe budgetary constraints, must spend extraordinary amounts of staff time redacting records as required by law. These costs are passed on to the taxpayers of the City.

In *Milwaukee Journal Sentinel v. City of Milwaukee*, 2012 WI 65, 341 Wis. 2d 607, 815 N.W.2d 367, the Wisconsin Supreme Court held that a record custodian may not charge a requester for separation costs, i.e., costs for redacting nondisclosable information as required under section 19.36(6), since there is nothing in the Public Records Law that specifically allows charging these costs. *Id.* ¶¶ 6, 42. The court rejected arguments that prior Supreme Court decisions expanded the fees that a record custodian may charge beyond those allowable under the specific language of section 19.35(3)(a)–(d).

In a concurring opinion, a majority of the court agreed with the lead opinion; but, recognizing the significant burden the court's decision will place on records custodians, asked the legislature to revisit the "cost issues that have become prominent in public record requests and determine whether the taxpayers should bear the full financial burden for public record requests or whether requesters should be active participants in the cost involved in required record separations." *Id.* ¶¶ 81, 83. (Roggensack, J., concurring). A majority of the Wisconsin Supreme Court justices have asked the legislature to reconsider this issue. In response we propose the following amendments (in bold) to the public records law:

(6) SEPARATION OF INFORMATION. If a record contains information that is subject to disclosure under s. 19.35(1)(a) or (am) and information that is not subject to such disclosure, the authority having custody of the record shall provide the information that is subject to disclosure and delete the information that is not subject to disclosure from the record before release. **The authority may impose a fee upon a requester for the actual, necessary and direct cost of deleting or separating the confidential information that is not subject to disclosure prior to releasing the record to the public.** *

...

Section 19.35(3) should be amended to add the following language:

- 9 (h) An authority may impose a fee upon a requester for the actual, necessary and direct cost of deleting or separating **confidential** information that is not subject to disclosure from a record prior to releasing the record to the public.

requester

184506/1049-2011-10



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-0701/11

MED:1/11

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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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1 AN ACT/...; relating to: fees charged for access to public records.

Analysis by the Legislative Reference Bureau

Under the public records law, an authority may charge certain fees to a person who requests a record to cover costs associated with responding to the records request. In *Milwaukee Journal Sentinel v. City of Milwaukee*, 2012 WI 65, 341 Wis. 2d 607, 815 N.W.2d 367, the Wisconsin Supreme Court held that the public records law does not permit an authority to charge fees for the cost of redacting confidential information from records. This bill reverses the decision in *Milwaukee Journal Sentinel v. City of Milwaukee* by providing that an authority may impose a fee upon a requester for the actual, necessary, and direct cost of deleting, redacting, or separating information that is not subject to disclosure from a record.

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2 SECTION 1. 19.35 (3) (cm) of the statutes is created to read:
3 19.35 (3) (cm) Except as otherwise provided by law or as authorized to be
4 prescribed by law, an authority may impose a fee upon a requester for the actual,

amends the public records law to provide

x

x

1 necessary, and direct cost of deleting, redacting, or separating information that is not
2 subject to disclosure from a record.

3 SECTION 2. Initial applicability.

4 (1) This act first applies to requests to inspect or copy a record made on the
5 effective date of this subsection.

6 (END)

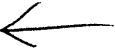
**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-070111dn

MED:/:....

gis

- date -

1. Please let me know if you would like to impose a minimum threshold that redaction fees must reach for an authority in order to charge fees. For example, section 19.35 (3) (c), stats., only permits fees to be charged to locate records if the cost is \$50 or more.
2. I added an initial applicability provision to this draft so that it only applies to requests that are made on or after bill's effective date. If this does not reflect your intent, or you would prefer a different initial applicability provision, please let me know. 
3. Per the conversation between Jeff Kuesel and Cory Bruce, the bill provides that the fee provision applies except as otherwise provided by any other law.

Michael Duchek
Legislative Attorney
Phone: (608) 266-0130
E-mail: michael.duchek@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0701/1dn
MED:cjs:rs

December 18, 2012

1. Please let me know if you would like to impose a minimum threshold that redaction fees must reach for an authority in order to charge fees. For example, section 19.35 (3) (c), stats., only permits fees to be charged to locate records if the cost is \$50 or more.
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3. Per the conversation between Jeff Kuesel and Cory Bruce, the bill provides that the fee provision applies except as otherwise provided by any other law.

Michael Duchek
Legislative Attorney
Phone: (608) 266-0130
E-mail: michael.duchek@legis.wisconsin.gov

Barman, Mike

From: Bruce, Cory
Sent: Tuesday, January 15, 2013 2:05 PM
To: LRB.Legal
Subject: Draft Review: LRB -0701/1 Topic: Public records redaction fees authorized

Please Jacket LRB -0701/1 for the ASSEMBLY.